IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17964 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SI (MM) SHAHID ALI - Petitioner(s)
Versus
UNION OF INDIA & 4 - Respondent(s)

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Appearance :
MR RAMNANDAN SINGH for Petitioner(s) : 1,
RULE NOT RECD BACK for Respondent(s) : 1 - 5.
MR JITENDRA MALKAN for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 07/08/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This petition under Article 226 of the Constitution challenges the order dated 21.07.2005 (Annexure-A) which will have the effect of demoting the petitioner from the post of Sub-Inspector (MM) to the lower post. The promotion was granted to the petitioner by order dated 12.07.2002.

2. While admitting the petition on 05.09.2005, this Court passed the following order:-

> "Rule. Petitioner is working as Sub Inspector, (MM). He apprehends his demotion, therefore, files this petition challenging the intended action of respondents. He has not been heard in the matter before ordering his demotion. Finding prima-facie case in his favour, his demolition from the rank of Sub Inspector (MM) is stayed till next date. Direct Service permitted."

3. The petition is resisted by filing the affidavit-in-reply by Mr. D.K. Kaul on behalf of the Commandant – 100 BN RAF, Ahmedabad. The specific ground raised in Para 4(A) of the petition that the impugned order is passed in violation of principles of natural justice and that the petitioner has not been afforded an opportunity of hearing to represent his case has not been disputed in the reply affidavit. On the contrary, it is stated in Para-(h) of the reply affidavit that before implementing the impugned order dated 21.07.2005, reasonable opportunity shall be given to the petitioner for redressal of grievances. In fact the deponent of the reply affidavit has come forward with a plea that the petitioner has

approached this Court without the petitioner making any representation to his immediate higher authorities to examine his grievances.

4. We fail to appreciate that what useful purpose could have been served by the petitioner approaching the immediate higher officer, if the final authority has already taken the decision to revert the petitioner on the ground that promotion granted to the petitioner was erroneous and that the error was detected at a later stage.

5. In view of the fact that the petitioner was already promoted as Sub-Inspector (MM) as far back as in the year 2002, the impugned order definitely affects and adversely affects the petitioner's right to hold the post as per the promotional order dated 12.07.2002. If there was any mistake in granting the said promotion as is being contended by the authorities, the authorities ought to have given the petitioner show cause notice and an opportunity of hearing before taking any decision in the matter.

6. In view of the above discussion, we quash and set aside the order dated 21.07.2005 (Annexure-A to the petition) qua the petitioner – Shahid Ali only on the ground that the same was passed without giving notice or opportunity of hearing to the petitioner and therefore, in violation of the principles of natural justice. While

quashing the order on the above ground, we leave it open to the authorities to take appropriate decision in accordance with law after giving the petitioner a show cause notice and an opportunity of hearing.

7. Rule is made absolute accordingly.

[M.S.SHAH, J.]

[K.A.PUJ, J.]

mrpandya*